



# A New Approach. Breaking the Stalemate on Refugees and Asylum Seekers

By John Menadue, Arja Keski-Nummi  
and Kate Gauthier

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## About the Authors

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## About this Paper

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## Prominent Australians urge our political leaders to break the stalemate on refugees and asylum seekers

Australia needs a circuit-breaker in our treatment of people seeking asylum from war and persecution.

On the tenth anniversary of the MV Tampa's rescue of 438 asylum seekers from their distressed vessel Palapa 1, Australia's asylum and refugee policy is still sadly characterised by human tragedy, political opportunism, policy failure and great cost.

People seek asylum here have been the subject of an increasingly contentious public and political discussion. A toxic debate has polarised large sections of the Australian community and paralysed politicians of most persuasions from engaging in constructive dialogue. Misrepresentation is rife. We have reached a stalemate.

It was not always this way. Leaders of the past like Ben Chifley, Arthur Calwell, Malcolm Fraser and Ian Macphée appealed to our better angels. We responded grudgingly to begin with and then quite charitably to large refugee flows.

We are now rightly proud of the great contributions which the 700 000 refugees who have come here since the Second World War have made to this nation. Australia's generosity has been handsomely reciprocated. Refugee resettlement has been a great success story. We should not forget it.

We must break the current impasse, which has strangled our ability to move towards principled and effective responses. A return to constructive bi-partisanship would benefit our nation greatly.

The Centre for Policy Development's *A New Approach – Breaking the Stalemate on Refugees and Asylum Seekers* report sets out a pathway to advance Australia's national interest by assuring that the claims of asylum seekers to Australia's protection are considered rigorously but with compassion.

The report proposes a series of actions with the potential to achieve tangible policy progress. These measures aim to ensure Australia:

- » Adheres to all international conventions which we have voluntarily signed
- » Quickly and correctly identifies those who are refugees and grants them protection consistent with UNHCR policies and guidelines
- » Protects Australians from any health or security concerns
- » Discourages dangerous journeys, but treats fairly those who have made those journeys
- » Affords all people in Australia their human rights, as well as access to the legal systems which deliver them, and
- » Rapidly returns home in safety and dignity those who are found not to be in need of Australia's protection.

*A New Approach* outlines steps for improvement in five main areas. By supporting the spirit of these recommendations we hope that good policy will again make good politics.

### Supported by:

**Ian Anderson, AM.** Board member, Oxfam Australia and Founding Chair of Australians for Just Refugee Programs (2002-2005). **David Block, AC.** **Julian Burnside, AO QC.** **Frank Brennan, AO SJ.** Professor of Law, Public Policy Institute, Australian Catholic University. **Bryan Brown, AM.** Actor. **Michael Chaney, AO.** Chairman, National Australia Bank, Woodside Petroleum and Gresham Partners. **Gervase Chaney.** President, Paediatrics and Child Health Division of the Royal Australasian College of Physicians. **Angela Chaney.** Member of the Coalition for Asylum Seekers, Refugees and Detainees. **Fred Chaney, AO.** Former Liberal Minister and Member of the Coalition for Asylum Seekers, Refugees and Detainees. **John Gibson.** President of the Refugee Council of Australia. **Kerry Goulston, AO.** Emeritus Professor, Sydney Medical School at the University of Sydney and Consultant Physician. **Samah Hadid.** Human rights activist and former Australian Youth Representative to the United Nations. **Gideon Haigh.** Journalist. **John Hewson, AM.** Leader of the Liberal Party of Australia (1990 – 1994) **Janet Holmes a Court, AC.** Chair, Heytesbury. **Ged Kearney.** President, Australian Council of Trade Unions. **Thomas Keneally, AO.** Novelist, playwright and author. **Carmen Lawrence.** Director of the Centre for the Study of Social Change at the University of Western Australia, and Premier of Western Australia (1990 - 1993). **Tuong Quang Luu, AO.** Director, ActionAid Australia and Head of SBS Radio (1989-2006). **Ian Macphée, AO.** Minister for Immigration and Ethnic Affairs (1979 – 1982). **Ian McAuley.** Adjunct Lecturer at the University of Canberra, and Fellow at the Centre for Policy Development. **Wendy McCarthy, AO.** Executive Director, McCarthy Mentoring. **Hugh Mackay.** Psychologist, social researcher and writer. **Sir Gustav Nossal, AC CBE.** Emeritus Professor, The University of Melbourne. **Chris Masters.** Journalist and author. **Roy Masters.** Sports journalist and former rugby league coach. **George Miller, AO.** Filmmaker - *Mad Max*, *Babe*, and *Happy Feet*. **Melissa Parke, MP.** Federal member for Fremantle. **Neville Roach, AO.** Former Chairman of the National Multicultural Advisory Council, Council for Multicultural Australia and Business (Migration) Advisory Panel. **Heather Ridout.** Chief Executive, Australian Industry Group. **Margaret Sixel.** Film editor - *Mad Max*, *Babe*, and *Happy Feet*. **Richard Tognetti, AO.** Artistic Director, Australian Chamber Orchestra. **David Williamson, AO.** Playwright and Screenwriter. **Kristin Williamson.** Novelist and Biographer.

## Main Points

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People who seek asylum by boat and the use of public policy tools like mandatory detention as ‘deterrents’ have been at the heart of an increasingly contentious public and political discussion in Australia for more than a decade. It has been a debate which has polarised large sections of the Australian community and paralysed politicians of most persuasions from engaging in a constructive policy dialogue.

In discussions about refugee and asylum policy, the great contributions which the 700 000 refugees who have come here since the Second World War are often overlooked. Australia’s generosity has been handsomely reciprocated. Refugee resettlement has been a great success story. We should not forget it.

This policy brief proposes a series of complementary actions that have the potential to deliver tangible progress on asylum policy. The hallmarks of an effective asylum policy are that it:

- » Adheres to all international conventions that Australia has signed
- » Quickly and correctly identifies who are refugees and grants them protection consistent with UNHCR policies and guidelines
- » Protects Australians from any health or security concerns
- » Discourages dangerous journeys, but treats fairly those who have made those journeys
- » Affords all people in Australia their human rights, as well as access to the legal systems which deliver them, and
- » Rapidly returns home in safety and dignity those who are found not to be in need of Australia’s protection.

We outline principles for reform and immediate implementable policy measures aimed at achieving the above objectives, in five key areas:

### **1. Restructuring the debate on national security and asylum.**

Despite national security being an important part of the asylum debate, asylum is not exclusively a national security issue. Viewing asylum as a national security threat masks the central question: who is a refugee and is their fear of persecution well-founded? This question has been sidelined in the debate by the ill-defined concept of national security. In this paper we recommend restructuring the debate by:

- » Reviewing and revising the values, principles and policies that should guide Australia’s refugee and asylum programs
- » Creating structural and legislative changes that reconnect asylum to human rights through an independent refugee and asylum statutory authority
- » Establishing an independent and professional commission to facilitate informed public debate.

### **2. Engaging fully within the region.**

We live in a connected world where Australia is not isolated from global currents and the trends in population movements. We cannot engage with our neighbours simply when it is politically expedient to do so. This does not help us anticipate emerging issues and shifting trends. Australian policy makers should routinely consider the broader regional and global impacts of decisions made at home, and attempt to strengthen the way we work with our regional partners. This approach will best assure our national and regional security.

Achieving this will require strengthening the current regional dialogue using practical projects and allowing civil society to become part of the search for solutions. Civil society (non-government organisations) often have the best insights into the dynamics of displaced populations. We have therefore recommended that Australia support the establishment of a well-resourced policy unit within “the Bali Process” Secretariat (a collaborative effort by more than 50 countries and numerous international agencies to combat people smuggling in the Asia Pacific) to work with regional governments and civil society organisations in planning regional cooperation and protection.

### **3. Refocusing Australia’s offshore humanitarian program.**

Australia will be well-served by actively addressing people movement issues at the source. Three ways to do this are:

- » Using resettlement strategically to address protracted refugee situations in our region by, for instance, working with UNHCR to re-prioritise referred resettlement from countries which are currently hosting large numbers of new asylum and refugee populations in our region
- » Using the in-country Special Humanitarian Program to address increasing issues of internal displacement, by providing resettlement for people still in their country of citizenship, and
- » Ensuring extended families stay together to avoid unnecessary distress during resettlement.

We also recommend separating the onshore and offshore numbers as this approach has no basis in good policy.

### **4. Creating a new approach to asylum policy in Australia.**

We recommend the following practices:

- » Using detention specifically for health, identity and security checks, with a 30 day time limit for adults and a 14 day time limit for children.
- » Ensuring that all detention decisions are subject to external scrutiny and judicial review
- » Phasing out mandatory detention within two years, transitioning to a risk-based detention approach to all asylum seekers, regardless of their mode of arrival. This approach will quickly determine who should *continue* to be detained according to security and character assessments.
- » Ensuring that minors have a legal guardian to represent their interests.

These changes combine humanitarian principles with a practical policy position that allows asylum seekers to be properly screened prior to their entry into the broader Australian community.

### **5. Reallocating funds to the initial settlement needs of refugees.**

Most of the savings from changes to detention policy should be reallocated towards innovative, targeted approaches to English language learning, particularly for those refugees who have a history of interrupted or minimal education. Given the high proportion of young refugees (roughly 60% of those resettled in Australia are under the age of 25) who resettle here, funding should also be directed to ensure the smooth transition of refugee youth into labour market programs and apprenticeships.

The full text of the authors’ recommendations is on Pages 7 and 8.

What this package of complementary measures will do is safeguard Australia’s national interest by ensuring that the claims of refugees and asylum seekers to Australia’s protection are considered rigorously but with compassion. Through these steps, it is our hope that good policy will once again make good politics.



## Policy Recommendations for the Commonwealth Government

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The following recommendations are an expression of a common-sense policy approach that the authors recommend the Commonwealth Government consider in order to return to a rational, values-based discussion on asylum and refugees. We recommend that Government should:

### Public and political debate in Australia

1. Establish an independent and professional commission, with a small secretariat and budget, to facilitate informed public debate.
2. Establish an independent Refugee, Asylum and Humanitarian Assistance Authority to administer the policy and programs that fall under Australia's offshore and onshore humanitarian programs underpinned by legislation that clearly articulates the values, principles and objectives of Australia's refugee and asylum policies.

### Regional cooperation

3. Support the establishment of a well-resourced policy unit within the Bali Process Secretariat to work with regional governments and civil society organisations in developing the key elements of a regional cooperation and protection framework and:
  - a. Work towards sustainable and practical protection outcomes in the region,
  - b. Scope out the development of common or complementary protection systems for asylum seekers in the region.
  - c. Develop and implement strategies addressing the humanitarian dimensions of displacement, providing practical support arrangements for displaced people in transit, and working towards lasting solutions.

### Offshore resettlement

4. Revise the refugee referral and selection policies and practices with the unity of the surviving family as a priority for resettlement.
5. Work with UNHCR to re-prioritise referred refugee resettlement, to:
  - a. Address durable solutions for protracted refugee situations in the region,
  - b. Respond to the growing issue of internal displacement through the strategic use (where appropriate) of the In-country Special Humanitarian Program
6. Increase our annual refugee intake from 14 750 to 20 000 by 2016. As a first step towards this target de-link the counting of asylum numbers in Australia from the offshore resettlement program.

## Onshore policy responses

7. Phase out mandatory detention within two years, transitioning to a risk-based detention policy for all asylum seekers regardless of their manner of arrival and including currently excised locations. This will end the prolonged use of Christmas Island and involve a repeal of the excision laws.
8. Refocus the legal framework for detention to match the mainstream legal framework for all other forms of detention in Australia.
9. Use detention specifically for mandatory health, identity and security checks, with a 30 day time limit for adults (with additional detention on judicial order) and a 14 day time limit for children.
10. Create new accommodation centres with greater flexibility for different security levels, in urban or regional hub locations, for ease of service delivery, better oversight and reduced cost.
11. Appoint an independent child guardian for Unaccompanied Minors in the immigration regime.
12. Release all children (and their carers) from mandatory detention before the end of 2011.

## Post-arrival support services

13. Reallocate most of the savings from reform of detention policies to priority settlement services particularly English language programs and youth support services.



## Australia's Obligations to Persecuted People

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For those old enough to remember, September 15 1945 brought more than an end to fighting. With the rebuilding of a shocked and shattered Europe and Asia began an era of global cooperation to safeguard humanity against a future recurrence of the unspeakable atrocities the world had borne witness to. It ushered in a framework to engender peace between states and enshrine the promise of protection for every man, woman and child, should their nation fail them.

Australia was at the centre of some of the seminal events leading to the creation of the United Nations (UN) and to the development of an international system based on the ideals of a *“faith in fundamental human rights, in the dignity and worth of the human person and the equal rights of men and women and of nations large and small”*.<sup>1</sup> Doc H.V. Evatt, Australia's then Minister for External Affairs, along with Jessie Street, played an influential role in the foundation of the United Nations and an important part in the negotiations leading up to the drafting and adoption of the Universal Declaration of Human Rights. In 1948, as president of the UN General Assembly, Doc Evatt declared the adoption of the Universal Declaration of Human Rights; of which Article 14 states that *“Everyone has the right to seek and to enjoy in other countries asylum from persecution.”* In its wisdom, the international community decided that in times of crisis, persecution, prejudice and ethnic cleansing, special conventions were needed to protect vulnerable minorities such as children, indigenous people and refugees.

In July 1951 the United Nations General Assembly adopted the United Nations' Convention Relating to the Status of Refugees ('the Refugee Convention') and on 22 January 1954 the Menzies Government voluntarily ratified it. As the sixth country to agree to the Convention, Australia was the nation whose sign-on made the Refugee Convention a binding international treaty. As a result, Australians have a unique and special relationship with the Refugee Convention.

There are some who today<sup>2</sup> argue the Refugee Convention is irrelevant in the new millennium; that it is an out dated by-product of a bygone era. A closer reading would suggest otherwise. The Refugee Convention has proven remarkably resilient and flexible in protecting desperate and persecuted people in ways which its drafters could never have initially imagined. Take for instance its applicability to protect victims of gender-based violence or those being persecuted on the basis of their sexual orientation. The 1967 Protocol, by removing the geographical and date limitations confining the Convention's focus to Europe in the aftermath of the Second World War, ensured that the Convention would remain a valuable instrument. It is as relevant today as it was when it came into force 60 years ago. The contemporary issue is that politicians seek to take as restrictive an interpretation of the Convention as possible. In Australia, for example, the repeated legislative amendments and additions particularly to s91 of the *Migration Act (1958)*, including a narrower interpretation of “persecution”, attest to continued attempts to be restrictive rather than expansive in the application of the Convention.

The Refugee Convention defines a refugee as someone who:

*Owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.*

This encompasses both those who have personally experienced repression, persecution and terror, and those who have fled their homes to protect their family from a fate which they have reasonable cause to expect awaits them.

Who amongst us today would accept a government which is able to punish us and our families for our religion, ethnicity or political opinions? We take for granted that we are free to actively take part in politics, practise our religion, and express our cultural practices and ethnicity without fear of reprisal. It is precisely these freedoms that strengthen our democracy.

Article 31 recognises that people may need to do something contrary to the law of another country in order to seek asylum, but that:

*States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*

In a 2002 Federal Court decision, Justice Merkel put this Article of the Refugee Convention into a contemporary Australian context:

*The Refugee Convention is a part of conventional international law that has been given legislative effect in Australia. It has always been fundamental to the operation of the Refugee Convention that many applicants for refugee status will, of necessity, have left their countries of nationality unlawfully and therefore, of necessity, will have entered the country in which they seek asylum unlawfully. Jews seeking refuge from war-torn Europe, Tutsis seeking refuge from Rwanda, Kurds seeking refuge from Iraq, Hazaras seeking refuge from the Taliban in Afghanistan and many others may also be called 'unlawful non-citizens' in the countries in which they seek asylum. Such a description, however, conceals, rather than reveals, their lawful entitlement under conventional international law since the early 1950s (which has been enacted into Australian law) to claim refugee status as persons who are 'unlawfully' in the country in which the asylum application is made.*

Article 33 of the Refugee Convention explicitly states that convention countries, including Australia, shall not:

*Expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*

In short, Australia willingly chose to sign onto the Refugee Convention, legally obliging us to allow people to seek asylum and have their claim to refugee status processed here. In doing this, Australia proudly said yes to refugees and yes to asylum seekers fleeing persecution.

Our obligations include:

- » To fairly and dispassionately consider the claims of those seeking asylum based on the definition of their well-founded fear of persecution
- » Not to punish a person because of the way they arrive in Australia, and
- » If they are found to be a refugee, not to return that person to their home country.

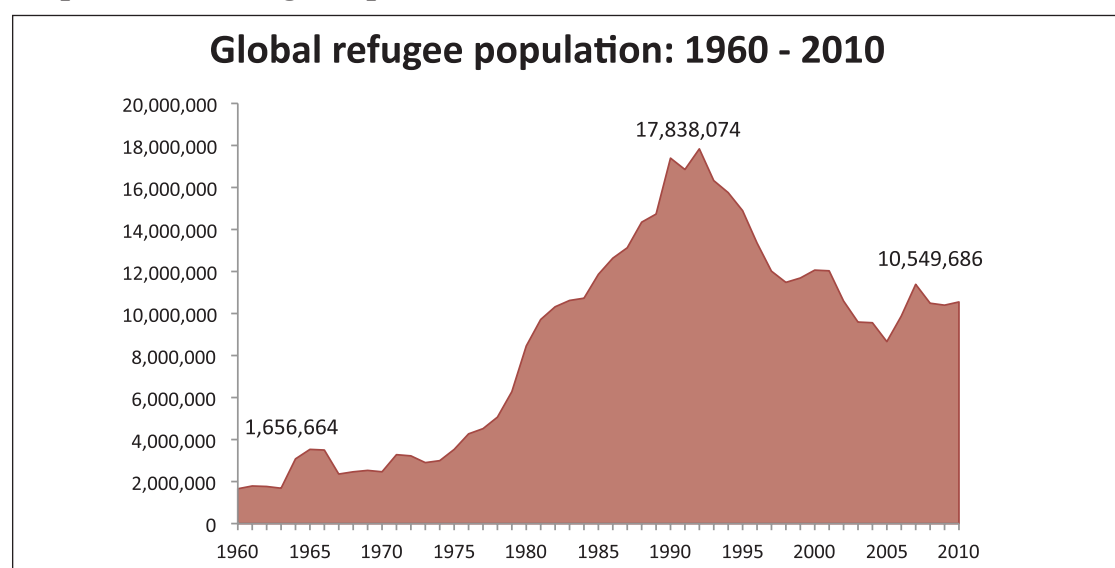
These fundamental principles, and Australia's commitment to them through our adherence to the instruments of international law, are as relevant today to our treatment of people from Afghanistan, Iraq and Sri Lanka as they were to our treatment of Jews and other displaced people fleeing a devastated Europe in the aftermath of the Second World War.

## An International Issue Requiring an International Response

Reading statistical reports from the United Nations High Commissioner for Refugees (UNHCR) is a sobering occupation – the numbers are in the millions, with each number representing not a widget or stock market report but a person with a story of tragedy, terror, persecution, displacement, rape or war.

Their experiences inform the bigger picture. For the most part this is a developing world tragedy. Australia is at the periphery of most people's quest for protection. We are one of the many developed countries surrounding the main countries of first asylum and transit.<sup>3</sup> Most people will never move beyond the neighbouring country where they have sought refuge and so long as they remain safe will not move on, preferring to return home as soon as their safety is assured. Those who move on do so because they lack a durable local solution or because of a deterioration in protection where they have had asylum.<sup>4</sup> This is most evident in Pakistan and Iran – both nations which, for different domestic political and security reasons have at various times, pushed asylum seekers out of their territories – back across the border if they can.<sup>5</sup>

**Graph 1: Global Refugee Populations 1960 - 2010**



Source: UNHCR: Consolidated Report Refugee Populations 1960-2009 and 2009 Global Trends.<sup>6</sup>

Each year's new report once again draws attention to how we as a global community fail our fellow human beings irrespective of where we live. For 30 years from 1960 to 1990 refugee numbers grew with depressing rapidity. While there may have been marked decline between 1990 and 2006, the progressive increase since then (with close to 11 million refugees today) points to a steadily-unfolding humanitarian crisis into the future.

The latest UNHCR figures<sup>7</sup> dispassionately note that at the end of 2010 there were over 43.7 million people of concern, including refugees, stateless people and Internally Displaced People (IDP). There are more people on the move now than at most times in history. Of these, 15.4 million are refugees or in refugee-like situations, with some 10.6 million in the care of UNHCR and another 4.8 million Palestinian refugees in the care of the UN Refugee Relief and Works Agency for Palestine (UNRRWA). This figure also included 27.5 million internally displaced people.

## A developing world tragedy

Of the 10.6 million refugees currently in the care of UNHCR, 80% have sanctuary in developing countries. In absolute terms and per capita, developing and socially unstable countries carry a disproportionate share of the burden in hosting and resettling refugees. There is a deep imbalance in international support for the world's forcibly displaced people.

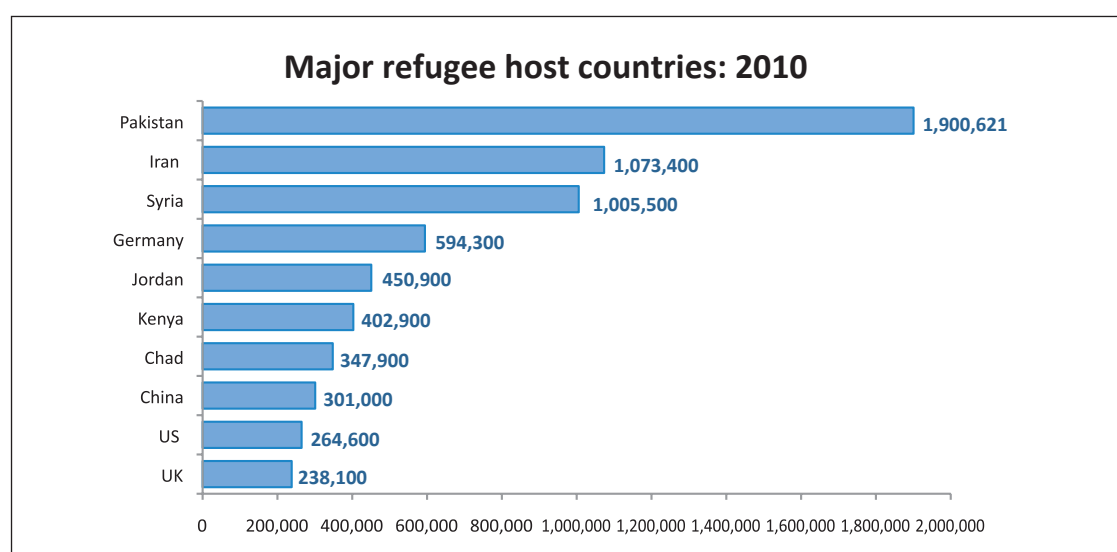
Pakistan hosts both the most refugees (1 900 621) as well as the most compared with the size of its national economy, followed by the Democratic Republic of the Congo and Kenya.<sup>8</sup>

*Over half of the refugees for whom UNHCR is responsible live in protracted situations. There are 25 such situations today, in 21 countries. This burden is borne disproportionately by the developing world, where four-fifths of all refugees live. Combined with the continuing impact of the global financial and economic crisis, the resources of host countries are under serious strain... A new deal on burden-sharing is essential to ensure that the generosity of host countries and communities is matched by solidarity from the developed world.<sup>9</sup>*

António Guterres, 10th United Nations High Commissioner for Refugees

In absolute terms, some of the poorest and most politically volatile countries host the largest refugee populations, including Iran (1 073 400 refugees), Syria (1 005 500), Kenya (386 000) and Chad (338 000). Not all of these countries have signed the Refugee Convention. They have limited resources to deal with large inflows of displaced people that put additional pressures on weak governance structures, where those seeking refuge compete for the same jobs, land and livelihoods as the local population. Despite these social and political pressures, these countries honour the spirit of the Refugee Convention by allowing people to stay in their territories until more durable solutions are found. At times they will themselves deliver the durable solution. In 2010 Tanzania granted citizenship to 162 000 Burundian refugees for whom return to Burundi, (despite the end of the civil war in 2005) was not a viable option.

**Graph 2: Major refugee host countries: 2010<sup>10</sup>**



Of those who seek asylum in one of the 44 industrialised economies, most seek protection in Europe and North America. The United States remains the largest recipient of new asylum claims among the group of industrialised countries (55 500), with France (47 800) the second largest.<sup>11</sup>

## Australia's contribution

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This situation contrasts with Australia's disproportionate reaction to the small number of people who arrive here, which amounts to one per cent of all applications for asylum worldwide. While Australia has had an increase in the absolute number of asylum seekers it receives, it is still far below those recorded by other industrialised countries.<sup>12</sup> The 44 industrialised states received a combined total of 358 800 asylum applications in 2010, with half of those (56%) being lodged in the top five receiving countries. Australia barely gets a mention because its numbers are miniscule compared with those of other industrialised states.

***In 2009 the Nordic countries of Denmark, Sweden, Norway, Finland and Iceland, with a combined population of 25 million (roughly equivalent to Australia's 22.5 million) received and processed 51 120 asylum claims. Australia received and processed 6 500.***

## What we know about why people move

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There is a substantive body of research on irregular migration, asylum, global population movements, humanitarian displacement and the economics of people smuggling. The evidence shows us that:

- » People move reluctantly - it takes an event or a threat such as war, poverty, famine, persecution or economic disaster for people to leave their homes
- » People who flee war and persecution like to stay close to home – so that, should conditions improve, they are able to return home to their families and livelihood<sup>13</sup>
- » Secondary displacement occurs when there are threats in countries of displacement<sup>14</sup>
- » Restrictive immigration policies and border controls lead to more risky illegal migration trends<sup>15</sup>
- » Lack of security or access to basic needs - health, jobs, shelter or education - make people vulnerable to people smuggling networks and organisers
- » Mandatory detention is not a deterrent - there is no evidence that mandatory detention stops people from seeking refuge<sup>16</sup>
- » A successful entry can lead to remittances home and make the difference between poverty and opportunities for families<sup>17</sup>
- » Smuggling enterprises are innovative, entrepreneurial and easily move between legitimate and illegitimate activities - often blurring the distinctions.<sup>18</sup> For example, many Jewish refugees and others who escaped Nazism paid people smugglers or agents
- » International cooperation works - but it takes time, patience and money, especially on the part of developed nations to provide compensation through development assistance and access to legal migration pathways.<sup>19</sup>

## Refugees move reluctantly

For a refugee, unlike a migrant, there is no choice but to uproot your family and move away from your social networks and all that is familiar – they are fleeing violence to protect themselves and their families. Sometimes they are simply expelled by their governments, as has been the fate of many of the Rohingya people from Burma and the Faili Kurds from Iraq.

Evidence shows that most people will not move on unless they are forced to. Research undertaken by the Norwegian Research Institute Fafo for the Jordanian Government found that close to 80% of Iraqi refugees in Jordan did not want to migrate and 40% intended to return to Iraq as soon as it was safe to do so. Those who indicated an intention to migrate were religious minority groups such as Christians and Sabeen-Mandean who did not believe they had a secure long-term future in Iraq.<sup>20</sup>

## Most stay close to home

Those who must flee also overwhelmingly choose to stay close to home. At the end of 2010, three quarters of the world's refugees were residing in countries neighbouring their own. Approximately 5 000 people a month walk into refugee camps in Kenya from Somalia, some 18 400 people last year went over the sea to Yemen.<sup>21</sup> The story is similar for the estimated 147 019 Burmese refugees in the Thai Burma border camps and, until recently, for the one million Afghans in Pakistan. It is in Australia's interest to ensure that the protection space in countries of first asylum is kept open. This temporary protection space is vital to support people being able to stay closer to home and to give them the opportunities to return home if and when it is safe to do so.

## Push factors are more important than pull

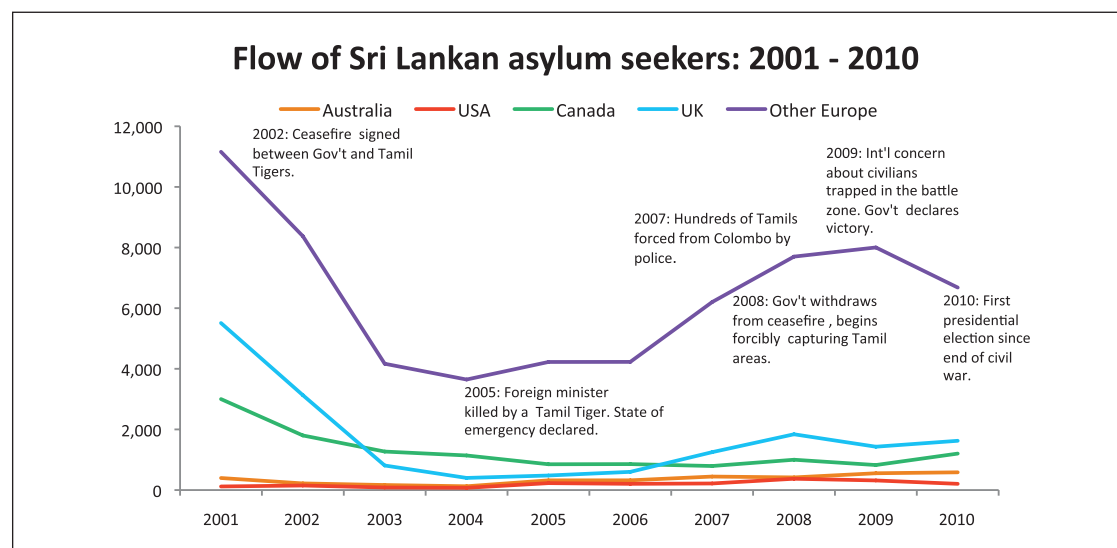
Studies over many years have highlighted that conditions at home determine a person's choice to walk across a border, to escape or flee.<sup>22</sup> Numbers can be manipulated but when a correlation is drawn between country events and asylum outflows it confirms the truism that push factors are a greater determinant to asylum flows than domestic policies in any one destination country.

Research undertaken on behalf of the European Science Foundation<sup>23</sup> and recent studies by Khalid Koser<sup>24</sup> have highlighted that destination choices are secondary to the need to find a safe place. Where people eventually go is guided as much by kinship links, easy transport routes and the decisions of middlemen and other organisers.

The numbers reflect this story. Boats may have for a short time ceased arriving in Australian waters but seeking asylum did not. Asylum numbers started trending upwards after 2001, during the Howard Government years, broadly consistent with international flows and with deteriorating country conditions in countries of first asylum such as Pakistan as well as in source countries such as Sri Lanka.

Graph 3 below shows the incidence of internal events in Sri Lanka from 2001 – 2010, and their impact on the outflows of people seeking asylum across the world. As the movements show, a breakdown in peace clearly aligns with an influx of Sri Lankans seeking protection elsewhere.

**Graph 3: Flow of Sri Lankan asylum seekers 2001 – 2010<sup>25</sup>**



Most asylum seekers who come to Australia are from the Asia Pacific – from China and Fiji, where there are family and kinship bonds, and from Afghanistan and Sri Lanka, because Australia is the first stable nation which has signed the Refugee Convention in this region. Australia's geographic position is more important than our place on a list of countries ranked by their desirability. New Zealand receives fewer asylum seekers, not because it is a less attractive country but because Australia is first in the asylum path. Of the top ten asylum source countries only six are significant in the Australian context.<sup>26</sup> We do not see many of the Russians, Serbians or Somalis that Europe deals with, for the simple reason that we are too far away, and are not in their asylum path.

## What does the future look like?

Recent history shows us that asylum seekers fleeing persecution and violence is an enduring feature of global population movements. The so-called 'peace dividend' from the end of the Cold War has not eventuated, and globalisation, improved transport routes and low cost airlines have added to the size and scale of the challenge. Compounding this is the possibility of major outflow events occurring in our region - for example, an unsettled (or worse, collapse of) North Korea could see major outflows and humanitarian needs.

We can expect to continue to have some of these movements come in this direction. The most recent Minority Rights Group International publication *Peoples under Threat*<sup>27</sup> finds that all of the countries with major asylum flows to Australia by boat are in the top 20 countries at risk of serious human rights violations and mass killings. While this report is not about asylum trends per se – it uses statistical analysis to identify situations around the world where communities are most at risk of mass killing – it has proven to be a highly accurate predictor as to where we can expect to see large numbers of asylum flows into the future.



It is incumbent upon the Australian government to acknowledge that, so long as there are asylum seekers, we will continue to receive our share of them. This is not something to be feared but to be managed, humanely and responsibly.

## Did you know? Fast facts about refugees and asylum seekers

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- » Australia has resettled 700 000 refugees since the Second World War.
- » There are 15.4 million refugees worldwide.
- » Nearly half of all asylum claims last year were from people in Asia (45%).
- » Asylum seekers look for protection in their region of origin. 75% of all refugees reside in countries neighbouring their country of origin.
- » 500 000 refugees will need permanent resettlement in 2011, yet there are only 100 000 resettlement places available.
- » Asylum seekers represent only 2.0% of Australia's annual migration intake.
- » 8 250 people claimed asylum in Australia in 2010, amounting to 1.04% of the global total.
- » Most asylum seekers arrive in Australia by air. From 2001- 2010, boat arrivals accounted for 24% of Australia's total asylum claims.
- » Most people seeking asylum who arrive by boat are assessed as being refugees. Most people seeking asylum who arrive by air are not.
- » Immigration detention costs in Australia in 2011/12, largely attributable to boat arrivals and not air arrivals, will be more than \$800 million.

## Invoking National Security in the Age of Insecurity

### One asylum seeker's story: Mr Hieu Van Le AO, Lieutenant Governor of South Australia

I remember, 34 years ago, being on the deck of a small, flimsy fishing boat anchored off the southern tip of Timor, listening to the radio for the weather forecast and waiting. We had been warned about the Timor Sea. The crossing would take us four or five days... On the third day of the crossing, there was some sudden excitement on the deck.

Someone had seen birds – someone said they were seagulls. These beautiful white seagulls were like angels leading the way to a promised land. I grabbed the binoculars and stared to the horizon, and there they focused on a most brilliant line of silver. I can't describe the moment, the feeling. This silver sliver of hope took form as we crept closer through the dawn light.

It became an early morning mist across Darwin Harbour. We approached nervously and hopefully. After many horrific experiences with coastguards in Southeast Asia, we were apprehensive as to what kind of reception we would now receive.

We chugged clumsily into the harbour, then heard the approaching buzz of an outboard motor. It's the coastguard again, we thought, and we braced ourselves, while some even said a little prayer.

Gradually, emerging out of the morning mist, we saw a "tinnie", with two blokes with shorts and singlets in it, sun hats on, white zinc cream on their noses, fishing rods primed and sticking up in the air, and the first beers of the day were in their hands.

They looked like "extras" from the old Barry McKenzie film! They waved at us and steered their boat very close to ours, and one of them raised his stubby as if proposing a toast. "G'day, mate," he shouted "welcome to Australia!" Then he revved up the motor and sped off to get on with the fishing trip they set out to do.

At another time, another place, a traveller such as me might have been greeted with fear or hostility. But at that time, in this place, I was given the unfettered wish and opportunity to show gratitude. What greeted me was a remarkable generosity of spirit.<sup>28</sup>

## Lamenting the loss of bipartisanship

Lamentable hallmarks of contemporary Australian debate about asylum seekers and refugees are the distinct lack of bipartisanship and a growing propensity for politicking ('A country which can't protect its borders is a country which is losing one of the essential attributes of sovereignty'<sup>29</sup>; 'Any other Australian who wanted to attend a funeral for someone who died... would have to put their hand in their own pocket.'<sup>30</sup>; 'The Opposition is trying to sell the Australian community a fairy tale in which all you have to do is go out to an asylum seeker boat and turn it around and everything will be fixed'<sup>31</sup>). It was not always like this. From the time Arthur Calwell first introduced a planned migration program for Australia one of its strongest characteristics was the bipartisan nature of that policy. All major parties recognised the importance of migration to the future of Australia.

Following the Vietnam War, under Malcolm Fraser's Prime Ministership and with Gough Whitlam's support, Australia performed wonderfully in accepting tens of thousands of Indo-Chinese refugees. We are now quite rightly proud of what we did throughout the late 1970s and into the 1990s to meet a challenge which, in raw numbers, was far larger than that presented by the small amount of people who seek asylum by boat today.<sup>32</sup>

September 11 2001 had profound implications on public attitudes and the political environment informing policy towards asylum seekers and refugees. It changed forever what was meant by the term "national security" – shifting its focus from external threats by foreign powers and rogue states to amorphous organisations, loose cells and individuals of concern. The public and political discourse on asylum hardened at the same time as global migration (including new refugee flows) grew.

When John Howard uttered the phrase "We decide who comes here and the circumstances in which they come" he did not say anything new, though it may have sounded like it. Howard was merely restating a fact – that Australian Governments, through the Federal Parliament, have had the power since Federation (via Section 51 of the Australian Constitution) to control migration. He implied that people moving across our borders represent a significant threat and shifted the issue firmly into the national security sphere.

In Australia, our protection obligations to persecuted people became secondary to an invigorated national security imperative. This included: the introduction of excision of external territories from the migration zone; the Pacific Solution for offshore processing where asylum claimants were no longer processed under Australian law and had no access to legal assistance or judicial review; and the introduction of Temporary Protection Visas (TPVs).

In that process, we have created two classes of asylum seekers, boat arrivals who ostensibly constitute a national security threat and air arrivals whose asylum claims are processed with little comment or hysteria. A new dichotomy when in fact there is no difference.

Increased politicking has led increasingly to populist hysteria in public discourse around the issue. Underlying public attitudes have been shaped by misinformation and untruths, namely:

- » **Asylum seekers are 'illegal'** – under the Refugee Convention (1951) it is the right of people arriving in Australia, even if they arrive without a visa, to make a claim for refugee status, and while that claim is being determined there is nothing illegal about their presence here.
- » **Asylum seekers jump the 'queue'** – there is no queue in the conventional sense. People move in many different ways and by its very nature the flow of refugees is messy and disorderly. Today there are 10.6 million refugees worldwide, and while not all will be in need of resettlement, for many that is the only durable solution. With only 98 761 refugees resettled in 2010 (less than 1% of those waiting are re-settled each year), at this rate, a person in need of resettlement would have to wait 100 years! It's more like a lottery than a queue.
- » **Most asylum seekers come to Australia by boat** – In the past 10 years 76% of asylum seekers came to Australia by air.<sup>33</sup>
- » **We are being overrun by asylum seekers who arrive by boat** – only 1.04% of Australia's annual migrant intake comes from asylum seekers and even less as boat arrivals. The 'problem' is miniscule.<sup>34</sup>

### The securitisation of people fleeing persecution: The post- 9/11 US experience

In the US, the US Patriot Act (2001) and the REAL ID Act (2005) strengthened restrictions on providing refuge to foreigners who had provided what was termed “material support” to “terrorist organisations”. The broad statutory definition of material support and its application by the Department of Homeland Security (DHS) and the Department of Justice (DOJ) negatively impacted on applications by many people who were themselves victims of terrorist violence in places like Colombia, Nepal and Sri Lanka. In a letter to President Bush leaders of the American Jewish community claimed:

*Shockingly, under today's laws, Jews who bravely resisted and survived Nazi terror would be excluded from refuge in the United States. Under current policy, the Warsaw ghetto uprising would have been considered a “terrorist activity” because it involved the use of weapons against persons or property for reasons other than for “mere personal monetary gain.”*

The rates of refugee admissions to the US dropped sharply to just 39% of the annual cap in 2002, slowly rising over time to reach only 75% of the annual cap in 2008.

## The future

How public policy is viewed and administered is heavily influenced by where it is located in the bureaucracy and the legislation which supports the policy intentions. Only by relocating the administration of refugee, humanitarian and asylum policies, reforming the legislation, and rearticulating the underlying public policy principles, can we recognise national security as just one of several factors to be taken into account when determining asylum seeker claims to refugee status.

There are positive international examples which Australia can draw on. Canadian legislation regarding refugee protection is located in the *Immigration and Refugee Protection Act (IRPA)*. Refugee protection is covered in a distinct division of the Act with a strong values-based preamble that states its aims:

- (a) to recognise that the refugee program is in the first instance about saving lives and offering protection to the displaced and persecuted;*
- (b) to fulfil Canada's international legal obligations with respect to refugees and affirm Canada's commitment to international efforts to provide assistance to those in need of resettlement;*
- (c) to grant, as a fundamental expression of Canada's humanitarian ideals, fair consideration to those who come to Canada claiming persecution;*

By contrast, the objectives of Australia's *Migration Act (1958)* are:

- “(1)... to regulate, in the national interest, the coming into, and presence in, Australia of non-citizens.*
- (2)... provides for visas permitting non-citizens to enter or remain in Australia and... this Act... is.... the only source of the right of non-citizens to so enter or remain.*
- (3)... requires persons, whether citizens or non-citizens, entering Australia to identify themselves so that the Commonwealth government can know who are the non-citizens so entering.*
- (4)... provides for the removal or deportation from Australia of non-citizens whose presence in Australia is not permitted by this Act.”<sup>35</sup>*

Australia would be better served with either a new Refugee Act or a separate division within the Migration Act which clearly articulates a set of guiding values and principles combining:

- » A statement of values for refugee protection and resettlement
- » The complementary elements of Australia's engagement in refugee and protection work
- » Our commitment to fulfil our international legal obligations to the Universal Declaration of Human Rights, the Refugee Convention, and other humanitarian international treaty instruments as they apply to protection and humanitarian assistance
- » While at the same time balancing this with Australia's national interest and security.

Getting this balance right is not an impossible task. In the early 1990s Australia faced an unprecedented flow of asylum seekers, with over 28 000 seeking asylum in the first few years of the decade.<sup>36</sup> Our response was not to shut the door but to build a robust and transparent asylum process. Since then, some 46 500 people have been granted protection in Australia.<sup>37</sup> In all this time, with few exceptions, refugees irrespective of how they have arrived in Australia have settled into the Australian way of life, found jobs, educated their children and have become valuable members of our community.

The creation of a separate Statutory Authority with overarching policy responsibility for refugees and humanitarian assistance in all its forms would make sure there is a strong and balanced focus on implementation of all aspects of the policy intentions in Australia and through its interaction with international agencies, especially the UNHCR. It would be charged with administering government policy relating to:

1. Overseas humanitarian aid and assistance to refugees and displaced persons in refugee-like situations. This could include support to international agencies and NGOs such as the UNHCR, United Nations Children's Fund (UNICEF), Save the Children Fund, the International Committee of the Red Cross (ICRC), and International Organization for Migration (IOM) for the provision of services such as shelter and security, health, protection assessments and capacity building
2. Management and implementation of government policies and decisions in the resettlement of the overseas refugee and humanitarian resettlement program
3. Ensuring best practices and processes for assessment of asylum claims, irrespective of how a person arrives in Australia

Consolidating these functions into one authority outside of a department of state but within a portfolio opens new opportunities for sensible public policy approaches not caught up in the hysterical debates over control, facilitation, and policing that inevitably arise when regulating and controlling visa programs.

Likewise we will not have good public policy until we are better informed about the facts about refugees and asylum. Caught up in crisis management over people seeking asylum by boat and detention, the Government and the department have failed to adequately address these important issues. What we need today is a small independent and professional commission to promote informed debate about refugees.

## Recommendations

1. Establish an independent and professional commission, with a small secretariat and budget, to facilitate informed public debate.
2. Establish an independent Refugee, Asylum and Humanitarian Assistance Authority to administer the policy and programs that fall under Australia's offshore and onshore humanitarian programs underpinned by legislation that clearly articulates the values, principles and objectives of Australia's refugee and asylum policies.

## Regional Cooperation – Strengthening Our Relationships

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Irregular migration is a global phenomenon; it is neither region-specific nor uniform in its types of flows. At any one time there can be some 30 to 40 million irregular migrants worldwide.<sup>38</sup>

There are few accurate statistics available on people movements into the Asia Pacific from the main source countries of Afghanistan, Iraq, Iran or Sri Lanka, but what we do know is that:<sup>39</sup>

- » In Malaysia there are 212 856 people of concern to UNHCR, including an estimated 81 516 refugees and people in refugee-like situations.
- » In Thailand there are 649 430 people of concern to UNHCR, including 147 019 Burmese in camps along the Thai Burma border.
- » In Bangladesh there are 229 253 people of concern to UNHCR, including some 29 000 Burmese Rohingya registered with UNHCR and a further 200 000 unregistered people living in the country.

Against this back drop, no one country can be reasonably expected to manage such population movements.

In this region, as in Europe and Africa, people continue to move by any means necessary. There is a strong correlation between breakdown in civil order and security and outflows of people. European studies into smuggling have shown that restrictive immigration practices and policies may have an impact but they are temporary as smugglers and people determined on an immigration outcome test new routes, ventures and ways of entry.<sup>40</sup>

New approaches are needed to not only ensure the protection needs of asylum seekers are met but also to stem the flow of irregular migration. A new policy framework is required to enhance capabilities in developing effective responses to protection and irregular migration in the region, and to strengthen regional approaches to stabilising displaced populations. Such an approach needs to be comprehensive in nature and include countries of origin, transit and destination. It must reinforce protection systems in countries of first asylum and transit to make sure displaced people have access to safe and secure shelter, health, education and livelihood opportunities, pending durable solutions. In other words, developing and strengthening the “protection space” for refugees and asylum seekers in the region.

We have seen what can be achieved in the Asia Pacific when there is a willingness to share the burden and work on practical measures in support of achieving durable solutions. In 1989 the Comprehensive Plan of Action for Indo-Chinese Refugees (CPA) provided a model showing how complementary measures addressing asylum, resettlement and repatriation can promote regional cooperation in response to a refugee situation. Yet when countries like Australia formally closed the resettlement programs under the CPA in 1996, and the international community departed leaving several thousand refugees in limbo in the region, we lost our chance to build an enduring and sustainable regional protection framework.

However, throughout this period new refugee flows have emerged and countries such as Malaysia, Thailand and Indonesia have continued to disproportionately shoulder the burden of hosting new asylum populations. We owe a great debt to these countries for continuing to shelter large numbers of refugees and asylum seekers.

In this time the regional architecture has also matured. In 2002 a new regional mechanism “the Bali Process”<sup>41</sup> was established. From a process initially focused on enforcement and criminalisation of people smuggling and trafficking activities, it has progressively shifted to recognising the humanitarian dimensions of population flows. At the past two Ministerial meetings in 2009 and 2011, the language of protection has been introduced into the official communiqués:

Ministers welcomed the... research project establishing an information base on regional approaches to protection, resettlement and repatriation, and the proposed workshop to deliver the results of the research and to consider how this research might be used to inform regional framework activities.<sup>42</sup>

As significant has been the decision by the Association of Southeast Asian Nations (ASEAN) to develop a Human Rights Instrument for the region. As was noted by the Chair of the ASEAN Human Rights Working Group:

Many kinds of human rights violations take place in Southeast Asia and a regional mechanism can help address this problem. First, the mechanism will ensure that ASEAN member states all adhere to international human rights standards. Second, the mechanism provides a common platform where ASEAN member states, being socio-politically different from each other, can articulate their human rights-related concerns. Lastly, with a human rights mechanism, the region can cooperate to address violations and collectively show its stand on human rights-related issues.<sup>43</sup>

Chairpersons of the Working Group for an ASEAN Human Rights Mechanism

These are the building blocks on which a new approach to protection in the region can be built. But it must be backed up with concrete actions, particularly by Australia, which is often viewed as a fair-weather friend quick to ask but slow to give. Indeed, Australia’s hand would be strengthened if we had stayed the course and developed a Human Rights Act, as was recommended in 2010 by the Government-appointed consultative panel chaired by Father Frank Brennan, S.J.

If done well, Australia could assist in the development of a new and enduring protection framework, sharing the burden on asylum and supporting states to build practical and responsive systems to support asylum seekers in the region. It could lead to common asylum policies and practices and ultimately to a Regional Protection Instrument not dissimilar to the Human Rights Instrument, or to similar ones such as 1984 Cartagena Declaration on Refugees which deals with refugees in Latin America.

Both UNHCR in its *10 Point Plan of Action for Refugee Protection and Mixed Migration*<sup>44</sup> and Oxfam in its *Asylum Seekers: The Way Forward*<sup>45</sup> have outlined the key elements of a regional framework, including:

- » Effective screening systems
- » Protection sensitive reception arrangements
- » Durable solutions – resettlement, alternative migration pathways and repatriation
- » Targeted development assistance



They go on to say that this needs to be underpinned by a set of principles which is consistent with international humanitarian treaty instruments (international law), specifically the Refugee Convention, and which includes appropriate safeguards to guarantee people are treated with dignity throughout the asylum process, and upholds the principle of *non-refoulement* (the duty to ensure that genuine refugees are not returned back to situations of danger).

A crucial element to the success of a regional protection framework is that countries that commit to action are not left to carry the burden of managing and maintaining irregular migrants for prolonged periods. A regional framework will only work when there is a full recognition that each actor in such a process plays a critical role in its success. For example:

**International agencies**, and UNHCR and IOM specifically, develop mechanisms for early registration, screening and assessment of asylum claims, and have in place appropriate counselling and welfare support services while people's claims are being assessed

**Local and international NGOs** establish and use their networks to tap into or run appropriate health, education and employment services, assist in providing housing and access to other support networks, and make representations to host governments

**Regional governments** assist in creating the conditions for people to remain within their borders while their asylum claims are considered, without the threat of expulsion through:

Specific regulations allowing legal stay within their territories

Giving access to work with specific conditions, so as not to become a drain on the local economy

**The Australian Government** could assist by:

More strategically targeting its humanitarian development assistance programs that benefit local and asylum populations alike - e.g. access to housing, livelihoods and education,

Together with UNHCR support the development of a state or regional asylum process, through partnering arrangements, secondments between countries, developing a common protection training and mentoring program for the region, and in establishing an asylum processing infrastructure.

Commitment to resettlement and alternative migration pathways such as in-country programs

It is in this context that the current agreement with Malaysia needs to be considered. While the current Government may see it as the "solution", it needs to be viewed from a broader regional perspective – it is not a solution on its own. Viewed through a regional lens it can become a catalyst to start the process of building a durable protection system in the region and delivering protection dividends for all asylum seekers.

Malaysia as a transit country is a key player in delivering a long term solution - indeed UNHCR in its recently released Global Report noted that while there are problems "constructive dialogue with national authorities has resulted in an improvement of the situation". If this can be achieved we can dare to hope that - just as ASEAN is developing a regional Human Rights Instrument - we can look forward in the future to a Regional Protection Instrument.

As Dr Jane McAdam, a Professor in the Faculty of Law at the University of New South Wales, has noted:

*“If such a framework were to succeed in reducing the number of asylum seekers making dangerous boat voyages, remove incentives for people smuggling and guarantee resettlement to all those found to be refugees then these would be laudable outcomes. But, as one commentator has noted these are “big ifs”. Its success will depend on the details”<sup>46</sup>*

We have that chance now to make sensible and realistic policies and should embrace it. Governments are strengthened when they work collaboratively with each other and with civil society organisations; where all parties can find the common ground and build a position of trust. There are simple measures which the Australian Government can undertake to further facilitate this process.

## Recommendations

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3. Support the establishment of a well-resourced policy unit within the Bali Process Secretariat to work with regional governments and civil society organisations in developing the key elements of a regional cooperation and protection framework and:
  - a. Work towards sustainable and practical protection outcomes in the region
  - b. Scope out the development of common or complementary protection systems for asylum seekers in the region
  - c. Develop and implement strategies addressing the humanitarian dimensions of displacement, providing practical support arrangements for displaced people in transit, and working towards durable solutions.

## Australia's Offshore Humanitarian Program

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### Passing on the gift of education to others: Ali Reza Yunespour

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This year Ali Reza Yunespour saw the opening of a school he helped build in his home village of Berjegai in central Afghanistan. After arriving in Australia as a refugee six years ago, and seeing the disparity in educational resources between Australia and his home town, Ali has made it a priority to help share the gift of education to those Afghans less fortunate than he.

“My life has changed so much through having access to education opportunities, and I strongly believe that education is the strongest way to bring peace to the world. It also opens up more opportunities for those kids than they ever could have imagined in their entire life.”

The School Project came about after Ali Yunespour was awarded a Rotary Young Leadership Award just after leaving high school. He attended a one-week camp for young leaders, at which he learned that in addition to having the will to help people, contacts are also important. “So, I went back to the Rotary Club of Ryde and I put forward to them an idea for a new school building for my village”, he says.

Partnering with the Indigo Foundation, which has been developing educational opportunities in the region since 2003, the School Project has contributed to the Borjegai village in a wide variety of ways, including seeing girl's attend school in the village for the first time.

Ali Yunespour sees community involvement as being key to making this a successful undertaking. “We have about 50% contribution from the village in every project that we do. This comes in the form of providing labour for the work that is taking place, providing land, and also taking responsibility for maintaining the buildings. This community-led development is the most valued to me.”

Ali has also been undertaking volunteer work in Western Sydney to help fellow Afghan refugees. He provides assistance to refugees sitting their citizenship tests, runs a homework support program for refugee students, and provides an English class for elder refugees. <sup>47</sup>

Australia's offshore humanitarian resettlement program (our refugee ‘resettlement program’) was established in its current form by the Fraser Government in 1977 in response to the emerging Indo-Chinese refugee outflows. It gives expression to Australia's long-standing commitment to find durable solutions for refugee situations internationally and responds to different pressures and priorities in the Australian context.

Australia resettles refugees because we believe that being part of the international community means we have a responsibility to help where we can to find durable solutions to refugee situations. Australia is only one of a handful of countries that has an established refugee resettlement program and, along with Canada and the US, is one of the top three resettlement countries. This commitment complements our international obligations under the Refugee Convention to process those seeking asylum in Australia.

Six thousand places each year have been reserved for the refugee intake (this will rise to 7 000 in 2011/2012) - that is, for people who have been found to be refugees by UNHCR and where they consider that the only durable solution is resettlement in a third country. The remaining places (7 750 in 2011/12) are allocated to the Special Humanitarian Program (SHP) component of the overall program.<sup>48</sup> These 7 750 places include:

- » All people who have been given protection in Australia – people who have sought and been granted asylum in Australia irrespective of how they have arrived.
- » Resettled refugees who sponsor other family members under the SHP
- » People who are in their country of citizenship but are in refugee-like situations and require resettlement (in-country SHP).

One category, the Special Assistance Category (SAC), which allowed for the resettlement of designated groups through a community sponsorship and settlement support arrangements, was progressively shut down after 1996 and is no longer in use.

## Resettlement demands far outstrip the number of available places

The most recent UNHCR data highlights a growing gap between the need for resettlement and the available places internationally. For 700 000 of the 10.6 million refugees in the care of UNHCR, the only durable solution is resettlement. Irrespective of changes in the conditions of their country of citizenship, for these people return home or local integration are not realistic options.

**Resettlement in a third country is the only available option for 700 000 of the world's refugees. Yet the sum total of available international resettlement places hovers at around the 100 000 mark – a gap of 400 000 places between those seeking resettlement and the number of available places.**

Depending on how you count the numbers Australia's contribution to the international resettlement effort is anywhere between 6 000 and 14 750 per annum. We can be rightly proud that Australia is one of the top three resettlement countries in the world.

## The policy challenges

Australia's resettlement program has evolved over the past 30 years to meet differing policy priorities, respond to emerging humanitarian crises, and meet community expectations in relation to refugee resettlement. The result today is a patchwork of demands on the program. These include the various objectives of the Special Humanitarian Program (SHP), the tension between onshore and offshore numbers, the scattered geographical nature of Australia's program priorities, and a restrictive interpretation of family in the selection process which often needlessly splits surviving family units.

The result is an incoherent set of policy responses which often appear opaque in administration and arbitrary in policy rationale. All of this limits any sensible discussion about the appropriate size and priorities for the offshore program into the future and its possible restructure.

## Special Humanitarian Program (SHP)

The SHP has become a proxy for family reunion. Its original policy objectives have been lost in the mists of time. These *were* two-fold:

- » In-country processing to quickly provide resettlement for people still in their country of citizenship (and so not technically a refugee under the Refugee Convention) but who faced systematic, substantial and gross violation of their human rights, and
- » People in refugee-like situations whom UNHCR had been unable to access or make a mandate decision on. In short, an alternative identification tool to UNHCR.

It also initially supported broader NGO involvement in resettlement through community-based sponsorship and assistance with resettlement costs such as airfares, provision of accommodation, and linking refugees with community based services once in Australia.

Today, this sponsorship is almost exclusively used by individuals, most frequently family members, who have resettled in Australia. Because selection processes in UNHCR referrals most often focus on resettlement of discrete family units at one location, and do not include extended networks of brothers and sisters and cousins, once one 'family' is resettled in Australia high levels of proposals for resettlement of extended family members tends to follow. With application rates fluctuating between 34 400 and 69 500 over past five years, and available places at around 5 000 each year (depending on asylum rates in Australia) the inevitable outcome is one of bitter disappointment, guilt and desperation from family members in Australia.

## A refined selection process

For refugees, family is what matters most in rebuilding shattered lives and broken families. The experiences of holocaust survivors are evidence of how finding one member of an extended family helped many to regain their identity, to belong and to have a connection with the living world.<sup>49</sup>

This is as true today for the person from Sierra Leone, Burma and Sri Lanka, who has been witness to unspeakable brutalities, as it was for the Jews fleeing Poland and Germany. Changing the way families are identified in the refugee process and expediting reunion when family members are found, will do more to help a person rebuild their lives in a new country than all the settlement support provided.

This can be achieved in two ways:

- » Ensuring that when a referral from UNHCR is provided for resettlement of a family that all members are identified, irrespective of their availability for resettlement, with clear identification of where they may be (other camps, in-country or missing)
- » Ensuring places are subsequently allocated for resettlement should these family members be located in the future.

The family migration regulations should also be amended to ease the sponsorship and visa application charges when family members are subsequently located but not identified in the original resettlement referral. This means dropping the two year wait for benefits and not imposing the substantial visa application charge (in the vicinity of \$3 245) to sponsor a family member.

### Targeting assistance to address protracted problems in our region

Alongside these issues are the bilateral and international dimensions of the refugee problem and how Australia plays a role in supporting finding durable solutions to protracted refugee situations. While there is a strong humanitarian element to the program it is often also seen through the prism of the challenges of global population movements, of Australia's responses more broadly to emerging security issues in the world, to regional dynamics and people smuggling. It cannot do all these things well.

In the recent past Australia's resettlement priorities have included resettlement from Africa, the Middle East and Asia. While the proportions have fluctuated, in recent years it has been roughly a third from each region.

UNHCR records that roughly half of the world's refugees come from Asia and that 30% of internally displaced people can be found here.

**Table 1: Number of Refugees and Internally Displaced People (IDPs) in Asia Pacific by Country of Asylum**

| Country of asylum | Refugees + those in refugee-like situations | IDPs    |
|-------------------|---|---------|
| Australia         | 21 805                                      |         |
| China             | 300 986                                     |         |
| India             | 184 821                                     |         |
| Indonesia         | 811   |         |
| Japan             | 2 586                                       |         |
| Malaysia          | 81 516                                      |         |
| Myanmar           | -   | 62 015  |
| Nepal             | 89 808                                      |         |
| New Zealand       | 2 307                                       |         |
| Pakistan          | 1 900 621                                   | 925 035 |
| Papua New Guinea  | 9 698                                       |         |
| Philippines       | 243   | 139 509 |
| Sri Lanka         | 223   | 273 722 |
| Viet Nam          | 1 928                                       |         |
| Thailand          | 96 675                                      |         |

*Note: excludes nations with statistically insignificant volumes.*

*Source: UNHCR Global Trends 2010, pg. 38.*

If Australia is to make a real difference then we need to be more strategic about how resettlement is used. We cannot respond to every situation. But we can make a difference if we respond to some and make that response a substantive and comprehensive one, both with a meaningful resettlement program as well as through development assistance and increased funding to the displaced persons programs.

Australia for instance could have a highly targeted focus on Burmese, Sri Lankan and Afghan refugees as well as resettling the small numbers of long-term refugee populations such as the Lao Hmong in Thailand and Vietnamese Montagnards in Cambodia. It could also establish targeted in-country programs in Sri Lanka and Afghanistan which starts to address the growing internal displacement issue and has the potential to unlock other migration pathways.

### **De-linking the offshore and onshore programs**

Australia has achieved much by working within the international system and with other countries in supporting new initiatives that continue to strengthen this system of protection. But we can do more if more places are available for the offshore refugee program.

**Australia continues to be out of step with international practice by counting those who seek refuge here as their country of first asylum, against our humanitarian resettlement program. We must be honest about our resettlement efforts. We do not resettle 14 750 each year. We resettle as few as 7 000 from overseas through the UNHCR program, depending on asylum trends.**

A first step to achieving this would be to not count the onshore protection numbers against the program. This step alone would immediately make available some 3 000 to 4 000 places (on current protection grants) to the offshore program. Australia is unique in counting both the onshore asylum numbers and the offshore resettlement program under one umbrella program. No other country counts its asylum numbers against its resettlement programs. No other country takes away places for resettlement based on asylum trends.

Even large resettlement countries like Canada, with an annual resettlement program similar to Australia of 13 000 - 15 000, and the USA which resettles some 70 000 – 80 000 refugees each year, do not count their large asylum numbers (of 11 154 and 19 800 granted asylum respectively in 2009) against their resettlement programs. If they did Canada's total humanitarian program would be closer to 24 000 places and the USA 90 000. Our 14 750 is not anywhere near these levels.

De-linking the offshore and onshore numbers will also go some way towards nullifying concerns that asylum seekers (especially those who arrive by boat) 'jump the queue' and deny resettlement for a person in a camp. When the Howard Government linked the offshore humanitarian intake to the onshore asylum numbers, ostensibly to "improve program management", its consequence was to punish all asylum seekers and refugees by substantially reducing the number which Australia resettles. Far from asylum seekers' taking the place of genuine refugees, it was this shift in public policy which made those places in Australia disappear. It is time to reinstate them.



## Refocussing the Special Humanitarian Program to address internal displacement

Another constructive step would be to further shift the balance of the program away from the SHP to the refugee component.

The SHP as an alternative “identification tool” for refugees has become redundant as UNHCR has substantially increased its ability to identify and refer people for resettlement. But, as has become increasingly clear, there has been a marked shift towards people being displaced within their own country. Today there are 27.5 million IDPs of which 14.7 million are receiving protection or assistance from UNHCR, because of conflict in their own country. Of this, there are 353 000 in Afghanistan, 274 000 in Sri Lanka, and 62 000 in Burma.

By definition IDPs do not have access to the protection tools covered by the Refugee Convention, because they still reside within their own country. Developing appropriate protection systems for IDPs is emerging as a major challenge for the international community.

With a more holistic approach to the resettlement of families under the ‘refugee’ component of the program, Australia’s SHP could be refocused to ease IDP pressures through targeted in-country programs, similar to the resettlement programs of the early 1980s when Australia had a substantial resettlement intake of IDPs from El Salvador and Chile (which was the genesis of the SHP). Today, this could be focussed on IDPs in Sri Lanka and Afghanistan, while retaining a smaller, more focussed resettlement program under the SHP for community-based sponsorship and resettlement.

## Conclusion

Australians can continue to be proud of what we do - but it pales in comparison to what we have done in the past when our programs at times reached up to 16 000 refugees - all resettled from overseas despite the increase in our onshore asylum numbers peaking at 23 000 in the early 1990s.

Australia is recognised for the lead role it has taken over many decades in resettling refugees and being a significant player in the international community in achieving meaningful outcomes. As the number of refugees rises across the globe, we need to build on this, and can do so by simple policy adjustments.

Through targeted resettlement, creative use of in-country programs and use of the development assistance and displaced persons programs, Australia will more comprehensively assist to unlock protracted and intractable refugee and internally displaced situations in Asia Pacific.

## Recommendations

4. Revise the refugee referral and selection policies and practices with the unity of the surviving family as a priority for resettlement.
5. Work with UNHCR to re-prioritise referred refugee resettlement, to:
  - a. Address durable solutions for protracted refugee situations in the region,
  - b. Respond to the growing issue of internal displacement through the strategic use (where appropriate) of the In-country Special Humanitarian Program
6. Increase our annual refugee intake from 14 750 to 20 000 by 2016. As a first step towards this target de-link the counting of asylum numbers in Australia from the offshore resettlement program.

## Policy Responses to Onshore Asylum Seekers

*Strong border security and humane and risk-based detention policies are not incompatible. They are both hallmarks of a mature, confident and independent nation.<sup>50</sup>*

Former Immigration Minister Chris Evans

The key objectives of Australian policy have become distorted by public debate on asylum boat numbers. Both major parties have developed policy tunnel-vision, concentrating on ‘detering’ boat arrivals from making the journey to Australia through punitive methods, without questioning the effectiveness or costs, or looking at alternative approaches.

Punitive deterrent policies have included: the introduction of mandatory detention for all asylum seekers arriving by boat, Temporary Protection Visas (TPVs), excision of external territories such as Christmas Island, and placing financial barriers on asylum seekers (such as no work rights) pending their protection outcome.<sup>51</sup>

### Detention as a deterrent: sloppy policy evaluation

Australia is the only nation with a policy of mandatory detention, yet we see far fewer asylum arrivals than other countries and host far fewer of the world’s refugees. In 2010, Australia ranked 46th in the world for the number of refugees per capita.<sup>52</sup>

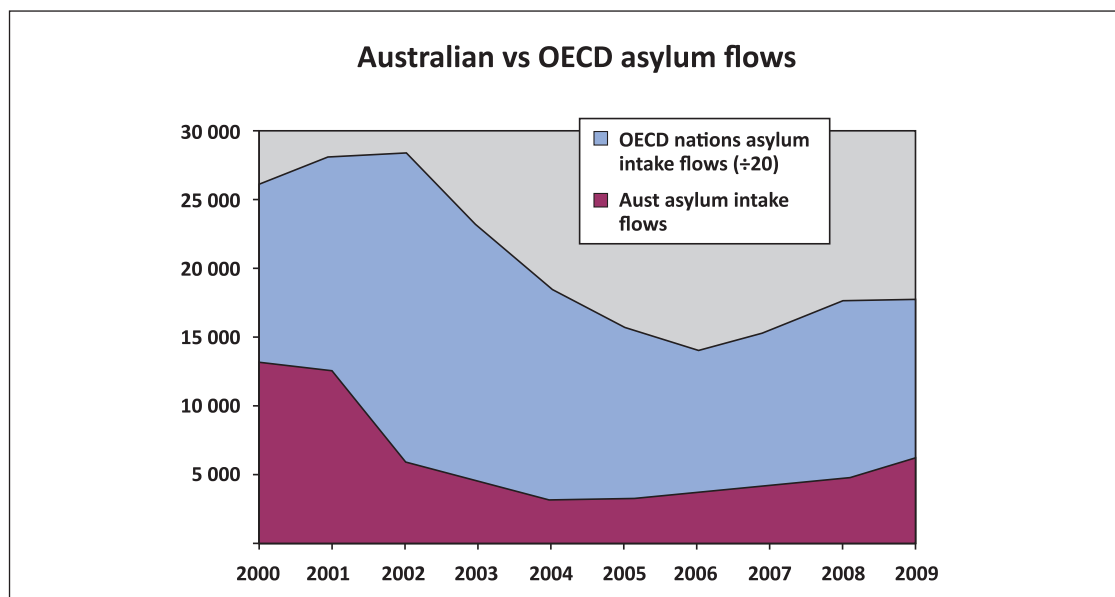
Both major federal parties claim that the detention of asylum seekers is a necessary component of border protection and that detention itself can deter future asylum seekers and the people smugglers who facilitate their journey. Some argue that policies such as TPVs and excision with offshore processing stopped the boats.

To claim that any raft of policies ‘stopped the boats’ or that a ‘softening’ caused an increase in boat arrivals is sloppy policy evaluation at best and a deliberate misrepresentation of statistics at worst. The International Detention Coalition, UNHCR and many other academics have found no empirical evidence to suggest that detention deters.<sup>53</sup>

Detention fails to impact on the choice of destination country and does not reduce numbers of irregular arrivals, since asylum seekers and irregular migrants are either:

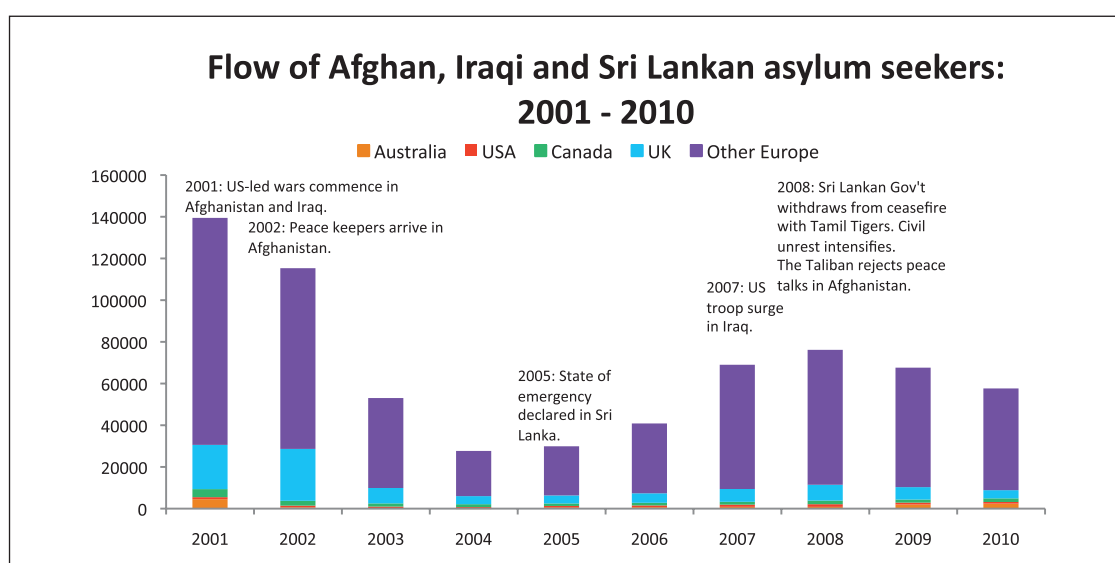
- » Not aware of the detention policy or its impact in the country of destination
- » May see it as an inevitable part of the journey, and
- » Do not convey the deterrence message back to those in their country of origin.<sup>54</sup>

As the Graph 4 shows, Australia’s asylum numbers have largely followed global trends in recent years. On this graph, the OECD figures have been reduced by 20 times to allow for a comparison of OECD numbers with Australian trends on the same axis. The large number of asylum seekers in OECD countries dwarfs Australia’s minimal intake. When shown this way, some small variation exists in the trend, indicating that domestic policy focused on boat arrivals has, at best, had a marginal impact on arrival numbers.

**Graph 4: Australian versus OECD asylum flows**

Source: OECD, *Foreign and foreign-born populations in the OECD countries: stocks and flows - Inflows of asylum seekers*

Graph 5 below shows total asylum seeker inflows from the major source countries of Afghanistan, Iraq and Sri Lanka. The trends are similar for each major destination country – suggesting that war, civil unrest and persecution in source countries are major influencers on people movements around the globe, and far more influential than the deterrent policies of any one destination country.

**Graph 5: Flow of Afghan, Iraqi and Sri Lankan asylum seekers: 2001 – 2010**

Sources: UNHCR *Asylum Levels and Trends in Industrialized Countries (2005-2010)*, UNHCR Statistical Online Database  
(Asylum seekers originating from, 2001-2004), UNHCR Statistical Yearbook (2004).

The UNHCR says ‘pragmatically no empirical evidence is available to give credence to the assumption that the threat of being detained deters irregular migration’.<sup>55</sup>

Using domestic policy to stop asylum flows is unrealistic. To completely stop asylum seeking, the Australian system would have to be worse than that being fled from - worse than extra-judicial killings, torture and persecution. And to attempt to influence the behaviour of other asylum seekers in third countries by punishing individual asylum seekers in Australia, who have committed no crime, is immoral and in some cases a breach of our constitution.<sup>56</sup>

## Cost benefit analysis

There has been even less attention paid to the overall costs of the approach. The UNHCR<sup>57</sup> shows the savings in switching from mandatory to community detention. It found that in 2005/06, the potential savings per person per day in Australia ranged from \$333 to \$117, depending on assumptions about the particular form of mandatory (e.g. remote facility) or community detention.

Next year (2011/12) the government will spend close to \$800 million in asylum seeker interception, detention and related costs.<sup>58</sup> This is about \$90 000 for every asylum seeker who comes to Australia.

Australia needs to develop a flexible, modern and outcome-focused reception system. Policy towards asylum seekers once they have arrived in Australia should protect the Australian community from security or health threats, rapidly and fairly determine who is owed protection under Australia’s international obligations, and those who are found not to be in need of Australia’s protection should be quickly returned home in safety and dignity. The system should afford all people their human rights as well as access to the legal systems that deliver those rights. And most importantly, it should be outcome-focused and cost-effective.

### The international experience: alternatives to detention

Many countries have been putting alternatives to detention into practice, including Hong Kong, Indonesia, United Kingdom, Belgium, New Zealand and Argentina. The results of these immigration practices include:

- » Cost reduction. The alternatives cost less than detention
- » High rates of compliance and appearance
- » An increase in voluntary return and independent departure rates
- » The reduction of wrongful detention and litigation
- » The reduction of overcrowding and long-term detention
- » Respect, protect and fulfillment of human rights
- » Improved integration outcomes for approved cases
- » Improved client health and welfare

Source: *Immigration Detention Coalition: IDC handbook*<sup>59</sup>

Policy changes by both the former Coalition and current ALP Governments recognised this and aimed, in some parts, to move towards that end. The most obvious examples are:

- » **The Community Care Pilot (2005)** – introduced by the Howard government, this pilot succeeded because it used a holistic case-management approach while keeping people in the community instead of in detention centres. The idea was that if you treat people humanely this will have positive outcomes for their immigration case. They are better able to assist in their case (trauma has detrimental effects on memory) and are more compliant because they feel their case is being heard fully and fairly. According to workers at service delivery agencies, this pilot program led to far higher rates of uncontested and voluntary returns of failed visa applicants.<sup>60</sup> This pilot is now the ongoing Community Assistance Support (CAS) program and is working successfully for asylum seekers in the community. But unfortunately, the political climate surrounding detained asylum seekers has made the current government wary of releasing even the most vulnerable detention cases, for fear of being called ‘soft’ - resulting in far fewer detained cases being part of CAS than under the pilot scheme itself.
- » **Extending the powers of the Commonwealth Ombudsman (2005)** – including reviewing detention cases greater than six months old and providing recommendations for possible remedies to continued detention.<sup>61</sup>
- » **The New Directions in Detention Policy (2008)** – which outlined seven Key Immigration Detention Values, including that mandatory detention be retained as “an essential component of strong border control” but seeking “to emphasise a risk-based approach to detention and prompt resolution of cases rather than punishment”.<sup>62</sup> The approach was to conduct health, identity and security checks immediately and if a person passed those checks their continued detention was “unwarranted.” This was to include asylum seekers held in excised locations such as Christmas Island. However, as boat arrivals began to increase in 2008-09 the policy was not fully applied because; firstly, there is not enough community-based accommodation on the island, and; secondly, as the Opposition made much of the increase in boat numbers it was politically difficult to transfer asylum seekers from Christmas Island to community-release options on the mainland.

## The way forward

### Risk-based detention

All other forms of detention practices in Australia – quarantine, mental health detention, prisons and remand – are based upon publicly-available criteria for who shall be detained, for how long and under what conditions. Detainees have the ability to have their detention reviewed, both for the legality of the detention as well as the need for the detention itself. Creating the same regime for immigration detention would bring the system into line with acceptable standards as practised in other areas of policy.

The key change required to achieve this is to apply a risk-based approach to detention across the whole detention system, including for all boat arrivals in excised locations. The criteria for risk must be documented, and the detention must be reviewable with enforceable remedy for unlawful or unwarranted detention.

Current mandatory detention policies require that all non-visa holders should be detained (NB: in practice, 76% of all asylum seekers who have arrived in Australia over the past 10 years, those who have come here by air, have not been detained because they are issued with visas on arrival). The fundamental problem is not with mandatory detention itself, but that the policy lacks a follow-up risk-analysis to determine who should *continue* to be detained. Recent research into detention suggests “the most significant policies for preventing unnecessary detention lie in the process of determining who should be detained and the reasons for their detention, rather than in traditional conceptions of ‘alternative to detention’ programs.”<sup>63</sup>

The most humane and least expensive outcomes would flow from the simplest policy change: take the current risk-based policies and practices used for plane arrivals under the New Directions in Detention program, and properly apply them to boat arrivals.

### **A mainstream legal framework - time limited and reviewable detention**

The current system of mandatory detention is not only arbitrary but also indefinite in nature. It is incarceration without trial and without a clearly defined timeline or time limit – thereby leading to boredom, frustration and anger by those who are being incarcerated. It can also become indefinite in the more literal sense – where a visa is not granted but a person cannot be removed from Australia, mandatory detention laws allow for the ‘administrative’ detention of that person for the rest of their life.<sup>64</sup> There is no other form of detention in Australia that is arbitrary, indefinite and non-reviewable.

Current mandatory detention law holds that detention can only be ended by the grant of a visa or by a person’s removal from Australia. This is in conflict with current government policy, which holds that indefinite immigration detention is unacceptable and a breach of international human rights instruments.

Detention for initial identity, health and security checks is still a fundamental part of a risk-based approach. The type of detention for those initial checks should have varied security levels, depending upon the individual being detained. An initial 30 day detention limit is sufficient to carry out health, identity and security checks in most cases. Continued detention on judicial order should be available, with a three month maximum for detention where no adverse security findings or character assessments have been made during those checks, with any health issues to be covered by existing quarantine laws. The time limit to detain children should be 14 days, with every attempt made to expedite the release of children. Standards for the conditions in which any child can be detained must be developed in conjunction with child welfare agencies. The entire family unit would be released with the child. The release of any member of that family unit could be cancelled under judicial order if security issues can be shown.

### **Conditions of detention**

Unlike state prison systems, there are no codified minimum conditions for immigration detention. While Immigration Detention Standards were once written into outsourcing contracts with companies such as Serco, these have since been removed, meaning that today there are no publicly-available standards for immigration facilities. This renders oversight of conditions impossible.

The different forms of detention facilities also lack usage guidelines. For example, the Immigration Transit Accommodation (ITA) facilities have been purpose-built for short-term accommodation, and are therefore appropriate for a short-term stay. Yet the ITAs are currently being used for medium- to long-term detention. It seems obvious that the level of facilities provided to a person being detained for three days versus 30 days versus 30 months should be vastly different.

Unfortunately, the complete lack of flexible accommodation facilities has tied the hands of the Department of Immigration, which has nowhere but high-security detention to place the majority of asylum seekers pending the outcomes of their initial security, health and identity checks.

### Flexible detention and accommodation centres

While there is on-going need for high-security centres on the mainland, particularly for criminal deportees and immigration compliance cases, there is limited capacity for accommodating low-risk asylum seekers outside existing detention facilities.

Given the enormous costs of building the Christmas Island detention facilities and the ongoing need for accommodation on the Island for boat arrivals, the centres there could be used for the initial 30 day screening process, with some re-purposing of the high-security centre to be more appropriate for asylum seekers. After that initial screening process, the majority of asylum seekers would be released into the community for the duration of their protection visa application process.

After initial screening, some asylum seekers may require ongoing detention. This should occur in existing mainland centres in urban locations to allow for access by lawyers, family and supporters, as well as greater oversight and reduced costs.

### The excision laws and use of Christmas Island

This would necessarily mean an end to the excision laws and transferring all asylum seekers off Christmas Island, as there is a lack of alternative accommodation on the island to allow for the release of people (who do not pose any risk) from the high-security detention facility. The remoteness of Christmas Island also makes it impossible to deliver torture and trauma counseling services that are readily available on the mainland. The location vastly increases the costs of accommodating detainees while reducing the quality of services provided. The latest available figures put Christmas Island at \$2 895 per detainee per day compared with Villawood in Sydney at \$190 per detainee per day.<sup>65</sup>

Beyond being excessively expensive, offshore detention and processing of asylum seekers is bad policy from a purely rationalist perspective, as it does not achieve its goals. There is no evidence to show that punitive practices have any significant impact on asylum flows. If it does manage to reduce the acceptance rate of protection claims from excised compared with mainland-processed asylum seekers, then the excision system is set up for *refoulement* – the return of genuine refugees back to situations of danger.

### The reality of ‘community detention’ for children

There is currently bipartisan support to remove children and their care-givers from the harsher forms of immigration detention. In practice however, children who arrive by boat have not been placed in community detention, but have instead been put into *Alternative Temporary Detention in the Community*. The reality of this form of detention is far from the name. Children are in no way in the community – they are in secure locked facilities and under guard when they go to school and to the few recreational activities they are allowed. Dr Louise Newman, a special adviser to the Government on detention issues has pointed out that in some cases these facilities are worse than the IDCs, as they lack purpose-built recreation, health and education amenities. While children are slowly being released into community detention<sup>66</sup>, this process has no determined guidelines regarding how long



children should be detained, in what form of facility, or the criteria for release. The current program for the release of children is a one-off. There are no plans to document policies for the community release of any child-asylum seekers in the future. Prolonged detention of children remains the default detention practice.

The situation for unaccompanied minors (UAMs) is also dire. The Minister for Immigration is both their guardian, the final determiner of their visa and the person who is required by law to detain them. This final responsibility is in direct conflict with the role of a guardian to hold a child's best interests at heart. This is particularly critical during the visa determination process, as UAMs lack a trained independent guardian able to monitor their best interests during the interview process to enable the children to properly provide information regarding their need for protection under the Refugee Convention.

## Recommendations

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7. Phase out mandatory detention within two years, transitioning to a risk-based detention policy applicable to all asylum seekers regardless of their manner of arrival and including currently excised locations. This will end the prolonged use of Christmas Island and involve a repeal of the excision laws.
8. Refocus the legal framework for detention to match the mainstream legal framework for all other forms of detention in Australia.
9. Use detention specifically for mandatory health, identity and security checks, with a 30 day time limit for adults (with additional detention on judicial order) and a 14 day time limit for children.
10. Create new accommodation centres with greater flexibility for different security levels, in urban or regional hub locations, for ease of service delivery, better oversight and reduced cost.
11. Appoint an independent child guardian for Unaccompanied Minors in the immigration regime.
12. Release all children (and their carers) from mandatory detention before the end of 2011.



## Building a better future

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In 1978 the Fraser Government made a visionary and bold decision which, 30 years on, Australia continues to benefit from; this was to accept in full the recommendations of *The Review of Post-Arrival Programs and Services to Migrants* ('The Galbally Report'). This landmark document built on and extended previous services such as the English language programs delivered by the state adult education authorities, a translating and interpreting service and limited community based settlement services. It helped transform them into a coordinated and structured suite of facilities to provide the fundamental building blocks of support to refugees in their quest to become active, participating members of the broader Australian community.

The success of these programs is best evidenced by the relative lack of comment and attention that is given these days to the large Indo-Chinese communities which are now part of the warp and woof of our rich Australian identity. It was not always so.

Making sure refugees have early and intensive on-arrival services is the best way to ensure they are able to manoeuvre their way through an alien and often confronting new society. Early days are difficult for refugees. They come with little or no financial resources, their skills are often not recognised, and they will usually have language difficulties. These early challenges are reflected in higher levels of unemployment and concentration in low paid jobs, often roles that others do not want.

But their situation steadily and rapidly improves. Professor Graeme Hugo, ARC Australian Professorial Fellow, describes their contribution:

- » Refugees are younger and have higher fertility levels than the Australian population as a whole.<sup>67</sup>
- » They are more likely than other groups to spend their entire life and raise their families in Australia.<sup>68</sup>
- » Refugee-humanitarian settlers are increasingly settling in regional Australia.<sup>69</sup>
- » Humanitarian settlers place a high store on education for their children. 48% of second generation Australian born people have post-school qualifications. For the total refugee-humanitarian groups, the percentage is much higher at 59%, with some refugee groups showing remarkably high levels of post-school qualifications, such as Estonia 65%, Latvia 65%, Slovakia 65%, Sri Lanka 61%.<sup>70</sup>
- » Humanitarian settlers are more likely to demonstrate entrepreneurial and risk-taking attributes and have a higher incidence of owning their own businesses than other migrant groups.<sup>71</sup>
- » The second generation of [humanitarian settlers] have a much higher level of labour force engagement than the first generation and in many cases the level is higher than for other second generation Australians.<sup>72</sup>

Not surprisingly, refugees in their early years are 'takers' of Australian generosity. But year by year they increasingly become great 'givers'. They pay back manyfold the generosity they initially receive, contributing to Australia out of all proportion to their number. The swift transition of refugees to participating members of the Australian community is the greatest measure of success of our resettlement programs. There are three key building blocks which make all the difference – English language skills, strong family structures, and support for young people. Just imagine what we could achieve if we reallocated some of the \$800 million which is currently being spent on detaining about 6 000 people each year, towards further bolstering the provision of these basic areas of need.

## English-language is a key enabler

Being able to communicate with your fellow citizens is the most important way to becoming a fully-functioning member of that community – it is a transformational moment for a non-English speaking person when what they say and what they hear are understood by others and by themselves. The annual budget for the Adult Migrant English Program (AMEP) is \$212.5 million. If detention became a last resort and a proportion of the savings re-allocated towards more intense and accessible English learning (decades of research<sup>73</sup> shows that English language is critical for a person to effectively function in the Australian community) then we would be creating early opportunities for refugees to start to contribute to the long term wellbeing and stability of their communities. This is possible through increasing the number of hours of English language tuition a person has access to, expanding access to women and adolescents where traditional schooling is not appropriate, and strengthening the English-in-the-workplace programs.

## Age matters

The Treasury's InterGenerational Report 2 (IGR2) of 2007 showed that age matters in migration. Roughly 60% of refugees resettled in Australia are under the age of 25. Migrants are younger than the resident population, are more likely to live for longer after their arrival in Australia, and contribute for a longer period of time to productivity growth.<sup>74</sup>

To harness the optimism and potential of the substantial youthful population that arrives here under the refugee resettlement program, we must help them swiftly. After years of interrupted schooling and living in camps where we know survival comes at enormous personal costs, we cannot condemn them to a marginal existence because at the time when they needed support most (on-arrival) it was not there. This can be better done by learning from what has worked in the past and making sure young people – too young to opt out of education but too old to be forced into a structured education system – are given access to programs that mentor them, link them into broader youth networks, and connect them with opportunities for work, with a focus on apprenticeships. Supporting employers to take the risk of training young refugees is also essential. As the last InterGenerational Report noted:

“...well-being is enhanced if... members of society have the opportunity to participate in economic and social activities. Education, quality health services and access to employment, for instance, contribute to higher productivity growth and higher labour force participation. They also contribute to the ability of Australians to be active members of society.”<sup>75</sup>

As detention becomes a policy of last resort, reserved only for those asylum seekers where community safety and security is deemed to be an issue, the savings realised can be re-directed to ensure resettled refugees are able to more quickly become productive members of the Australian community. We are stronger when those most vulnerable are given the opportunities to transform their lives.

## Recommendations

13. Reallocate most of the savings from reform of detention policies to priority settlement services particularly English language programs and youth support services.

## Conclusion

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Asylum and refugee flows to Australia and round the world are not a temporary aberration. They are a long-term issue which we must face and plan for.

In managing asylum and refugee flows in the past, Australia has done very well. We should be proud as a nation of what we have achieved. We can recapture the benefits we reaped from past policies which helped vulnerable people to find a new, prosperous and free life in Australia and enabled these newcomers to contribute to the economic and social life of our nation.

The recommendations in this paper lay the foundation for a new public and political discourse based on appealing, as Abraham Lincoln so aptly put it, to the “better angels of our nature” - not on half-truths masked as fact, or political cowardice. Such a discourse could be the beginning of a long hard journey towards the resumption of a bipartisan dialogue on asylum and refugees, once the hallmark of Australia’s approach to matters of national importance, but sorely absent in recent years. When we responded to our better angels, the new arrivals paid us back generously.



## Abbreviations, Acronyms and Glossary

|                                |   |
|--------------------------------|---|
| AMEP                           | Adult Migrant English Program   |
| ASEAN                          | The Association of Southeast Asian Nations  |
| Asylum seeker                  | A person who is currently seeking protection as a refugee and is still waiting to have his/her application for refugee status assessed.   |
| Asylum path                    | Most commonly used to explain the process and channels by which people move from one location to another as protection space contracts in countries of first asylum and transit.  |
| Alternative Place of Detention | An immigration detention facility designed for people who have been assessed as posing a minimal risk to the Australian community.  |
| CAT                            | Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)   |
| CEDAW                          | Convention on the Elimination of All Forms of Discrimination Against Women (1979)   |
| CPA                            | The Comprehensive Plan of Action for Indo-Chinese Refugees (1989)   |
| CROC                           | Convention on the Rights of the Child (1989)  |
| Community detention            | Where people reside in the community. Conditions of release range from being able to move about freely to a form of home detention, depending on the security or compliance assessment on the individual. Conditions can include having to be accompanied at all times by a designated person or immigration officer, reporting requirements, or being required to stay in approved accommodation.                            |
| Convention country             | A country which has signed the 1951 UN Convention Relating to the Status of Refugees. The formal term for such a country is a signatory or a party.   |
| Excised offshore place         | An area of Australia which is excluded from the migration zone. Under Australia's Migration Act, "unlawful non-citizens" who first enter Australia at an excised offshore place are unable to submit a valid visa application unless the Minister for Immigration makes a personal intervention into the case. Excised offshore places include Christmas Island, Ashmore and Cartier Islands and the Cocos (Keeling) Islands. |
| Human right                    | A basic, universal freedom or entitlement inherent to all human beings.   |
| ICCPR                          | International Covenant on Civil and Political Rights (1966)   |
| ICESC                          | International Covenant on Economic, Social and Cultural Rights (1966)   |



|                                 |  |
|---------------------------------|--|
| IDP                             | Internally-displaced people. Unlike refugees, IDPs have not crossed an international border to find sanctuary but have remained inside their home countries. Even if they have fled for similar reasons as refugees (armed conflict, violence or human rights violations), IDPs legally remain under the protection of their own government - even though that government might be the cause of their flight.          |
| IOM                             | International Organization for Migration   |
| Mandatory detention             | An Australian Government policy which requires all unlawful non-citizens (or persons who, if they were in the migration zone, would be considered unlawful non-citizens) to be detained until they are granted a visa.   |
| Migrant                         | A person who chooses to leave their country and settle in another country.   |
| OECD                            | Organisation for Economic Cooperation and Development  |
| Protection space                | Creating an environment, most commonly in countries of first asylum or in transit countries, which enables the delivery of protection activities, for example access to shelter and other social services and protection assessments, pending a durable solution.  |
| Refoulement                     | The forcible return of a refugee or asylum seeker to a situation where his/her life or freedom may be threatened. Refoulement is a violation of the Refugee Convention.  |
| Refugee                         | Any person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his/her nationality and is unable, or owing to such fear, is unwilling to avail himself/herself of the protection of that country.  |
| Temporary Protection Visa (TPV) | TPVs were granted to people who had arrived without documentation and were deemed to be refugees. TPVs allowed the recipient to stay in Australia for three years. After this time they were required to apply for further protection or return to their country of origin. TPV holders had no family reunion rights, no right of return if they travelled out of Australia and limited access to settlement services. |
| The Refugee Convention          | Convention Relating to the Status of Refugees (1951)   |
| Transit                         | A temporary place of stay, passing through   |
| UNHCR                           | United Nations High Commissioner on Refugees   |
| UNODC                           | United Nations Office on Drugs and Crime   |

## Notes

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## ON THE RECORD:

# The need for urgent change...

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### HEATHER RIDOUT

Chief Executive of the Australian Industry Group

*"The new approach to refugees and asylum seekers proposed by the Centre for Policy Development deserves widespread community support and should be given serious consideration across the political spectrum. With genuine political will there is no reason why Australia cannot move away from the corrosive and divisive state of the current debate and back to the bipartisan approach which served Australia so well for so long."*

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### GED KEARNEY

President of the Australian Council of Trade Unions

*"As a nation we've engaged in vigorous debate about the issue of asylum seekers over the last decade. This paper examines the common-sense approach that has been lost in the politics of refugees. Somehow among the fractious dialogue we have lost typical Australian values such as tolerance, compassion and generosity."*

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### SAMAH HADID

Human rights activist and former Australian Youth Representative to the United Nations

*"The Centre for Policy Development's report 'A New Approach – Breaking the Stalemate on Refugees and Asylum Seekers' is exactly the fresh and comprehensive approach that is needed in this policy debate. This report is the circuit breaker refugee advocates and policy makers have been looking for."*

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### PROFESSOR FRANK BRENNAN, SJ AO

*"We Australians are still all at sea seeking to find an asylum policy which is workable, economic, legal, politically saleable and above an agreed moral bottom line. The report, A New Approach, from the Centre for Policy Development deserves consideration as a conversation starter and a prospective circuit-breaker."*

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### GIDEON HAIGH

Journalist

*"Australia's policies for the treatment of refugees are tired, cynical, populist and punitive. I wholeheartedly support the CPD's thoughtful, comprehensive and realistic proposals, in the belief they will enhance the contribution this country makes to the alleviation of a worldwide problem."*

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### JOHN HEWSON, AM

Former leader of the Liberal Party of Australia (1990 – 1994)

*"This is an issue that should be above and beyond politics, not one to be exploited in a mindless, short-term political race to the bottom, the "winner" being the toughest and most inhumane to those who are predominately desperate people fleeing war and persecution in search of a new life for themselves and their families."*

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### CARMEN LAWRENCE

Former Premier of Western Australia (1990 - 1993)

*"Long-term detention of asylum seekers fleeing persecution not only violates their human rights, but also severely damages their health, resulting in further trauma, depression, self-harm and profound psychological damage."*

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### NEVILLE ROACH, AO

Former Chairman of the National Multicultural Advisory Council

*"Why has the trickle of asylum seekers made us so fearful that we abandon our commitment to human rights? The crisis is entirely because of the extreme and ultimately futile measures we have adopted. The right and smart solution is to work within the framework of our immigration and humanitarian program."*

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Centre for Policy Development, August 2011

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